IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

M/s. CHETAK STONES PVT. LTD. v. THE DEPUTY DIRECTOR, ESI CORPORATION AND OTHERS.

S. B. CIVIL WRIT PETITION NO.6196/2005,
under Articles 226 & 227 of the Constitution of India.

DATE OF ORDER: : 21. 10. 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.P.D.Bohra, for Petitioner.

BY THE COURT:

By the instant petition, the petitioner has prayed that by an appropriate writ, order or direction, the impugned order dated 23.2.2005 (Annexure 6), may be quashed and set aside and the requirement of pre-deposit of 50% of the amount for entertaining application under Section 75 (2-B) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act, 1948') may be waived.

Brief facts giving rise to the instant petition are that the petitioner is a Private Limited Company registered under the Companies Act. The respondent – Employees State Insurance Corporation (hereinafter referred to as 'the Corporation'), vide its letter dated 24.12.2003 (Annexure 2) requested the petitioner to make payment of a sum of Rs.51,941/- against E.S.I. Contribution, failing which the recovery proceedings shall be initiated. The petitioner-company submitted a reply to the demand letter vide its letter dated 9.2.2004 (Annexure 3) that the Directors of the Company are not employees within the meaning of Section 2 (9) of the Act, 1948 and no ESI contribution is chargeable from them. The petitioner-company also moved an application under Section 75 (2-B) of the Act, 1948 with a prayer to quash and set aside the illegal demand made by the Corporation.

Section 75 (2-B) of the Act, 1948 reads as under :-

> S.75 (2-B). No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court, unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation.
>
> Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Sub-section.”

After hearing the learned counsel for both the parties and considering the submissions, the Civil Judge (Senior Division), Employees' State Insurance Court, Sirohi, vide order dated 23.2.2005 (Annexure 6), dismissed the application of the petitioner-company and directed to deposit 50% of the due for maintainability of the application.

Being aggrieved by the order dated 23.2.2005 (Annexure 6), the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that the Managing Directors were not functioning as employees of the petitioner-company and there was no contract of employment of Managing Directors of the Company with the petitioner – company, as Shri Madan Lal Garg, Shri Kamlesh Gard and Smt. Chanda Garg were only having the normal status of Managing Directors, therefore, the remuneration received by them cannot be termed as wages and the Managing Directors are not covered by the provisions of the E.S.I. Act.

It is further submitted by the petitioner-company that Shri Madan Lal Garg, Shri Kamlesh Gard and Smt. Chanda Garg are not only the Managing Directors, but they are also share-holders

of the petitioner-company, therefore, according to the learned counsel, the status of the Managing Directors is different then the employees working in the petitioner-company.

It is also submitted by the learned counsel for the petitioner-company that the E.S.I. Court has not properly exercised its jurisdiction under Section 75 (2-B) of the Act. According to the learned counsel, the Managing Directors of the Company are not employees under Section 2 (9) of the Act and the claim of contribution made by the Corporation regarding remuneration is not tenable in the eye of law.

Section 2 (9) of the Act, 1948 reads as under :-

> "S.2 (9). "employee" means any person for wages in or in connection with the work of a factory or establishment to which this Act applies and- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are to lent or let on hire has

entered into a contract of service."

Heard learned counsel for the petitioner.

According to Section 2 (9), the term "employee" means – any person directly employed for wages in or in connection with the work of a factory. It further applies on the person who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory. It also applies on the person who is employed by an immediate employer on the premises of the factory or whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent on hire has entered into a contract of service.

Similarly, Section (2-B) provides that no matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation.

The learned E.S.I. Court has rightly held that the persons who have claimed for E.S.I. Contribution are covered within the definition of Section 2(9) of the Act. Apart from that, it is

admitted position that the petitioner-company has not deposited with the Court fifty percent of the due amount as claimed by the Corporation. Thus, in view of the non-fulfilment of the requirement of fifty per cent pre-deposit amount, the application of the petitioner – company filed under Section 75 (2-B) of the Act has rightly been rejected and the discretion has rightly been by the learned E. S. I. Court. The petitioner – company has not given given sufficient reasons for waiving the demand amount.

In view of the aforesaid facts and circumstances of the case, I do not find any merit in this writ petition. The same is, therefore, dismissed in limine.

There will be no order as to costs.

(R. P. VYAS), J.

scd.